

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

DONNA GROHMAN,

Plaintiff,

vs.

MOUNTAIN WEST FARM BUREAU
MUTUAL INSURANCE COMPANY,

Defendant.

No. CV 19-58-H-SEH

ORDER

On September 15, 2021, the Court received via United States Mail a letter from Alan F. Blakley, Esq. ("Blakley") dated September 9, 2021, a copy of which is attached to this Order.

The September 9, 2021, letter, regardless of form, is in substance, at least in part, a motion to the Court by Blakley that seeks certain relief:

Please help me get Mountain West to pay the bill it incurred by serving me with a subpoena under Rule 45. If possible, I'd like to add 2 hours of my time (\$600.00) to the bill for researching my options under Rule 45 and looking at discovery requests that I had previously reviewed in this matter, and for writing this letter.


The Court will treat the September 9, 2021, letter as a motion to the Court under L.R. 7.1.

ORDERED:

Each party is directed to file a brief on or before 4:45 p.m. on September 22, 2021, directed to and addressing all topics referenced in the September 9, 2021, letter to the Court. Optional response briefs may be filed on or before 4:45 p.m. on September 30, 2021.

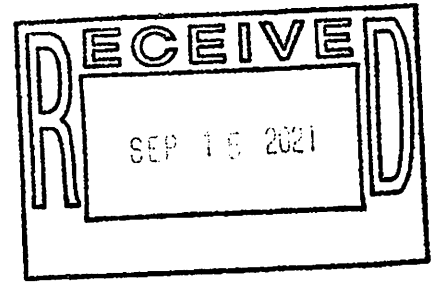
The Court will set the matter for hearing on the record by separate order.

DATED this 15th day of September, 2021.



SAM E. HADDON
United States District Judge

Alan F. Blakley, Esq.
4216 Norbeck Road
Rockville, Maryland 20853
September 9, 2021



Honorable Sam E. Haddon
Paul G. Hatfield Federal Courthouse, Suite 3100A
901 Front Street
Helena, Montana 59626

RE: *Grohman v. Mountain West*, CV-19-58-H-SEH

Dear Judge Haddon:

I apologize for needing to contact you. However, Mountain West served me with a Rule 45 subpoena in this case and refuses to pay me for my work in complying. If you cannot help me, I will need to file a lawsuit in Maryland – something I do not wish to do. I will explain:

During my deposition in this matter on October 8, 2020, Ms. Lund, the attorney for Mountain West, asked me several questions concerning cases I had previously worked on. These questions had nothing to do with my expert report, consequently I was unable to answer them very well. When I knew we were having a hearing in June 2021, I thought maybe Ms. Lund would ask me questions about my work again. Even though it had nothing to do with preparing to speak about my opinions, I did not know how much of this irrelevant information you would allow her to adduce. Consequently, I went back and looked at my back-up drives. When she was not allowed to ask questions about this irrelevant material, I forgot all about it.

Then, over a month later, Ms. Lund had a Rule 45 subpoena served on me at my residence at 9:50 pm on a Friday night. See attached. I learned that she had never initiated a discovery dispute with Ms. Grohman to attempt to elicit these irrelevant documents with nothing to do with my report and that I had not otherwise reviewed except in anticipation of irrelevant questions from Ms. Lund in June.

Moreover, even though Ms. Lund sends frequent emails to Ms. Grohman's attorney, in this case she sent a copy of the subpoena by mail ensuring he would not receive it prior to my being served late at night. (See notice of service on the subpoena). In any event, I decided that it would be easier to review my back-up media again [I had kept no record of what I had reviewed prior to the hearing] than to fight the subpoena under Rule 45 even though it was issued months after the close of discovery and sought irrelevant material. Moreover, most of these documents would have been available through PACER or elsewhere. I followed the instructions in the subpoena and produced documents directly to Mountain West. I also provided a bill for my time and costs (a copy of which is attached).

Now, Mountain West is claiming that Ms. Grohman should have provided the material under Rule 34 in discovery and Mountain West is refusing to pay for my work in responding to a Rule 45 subpoena. I find this "argument" (made for the first time *after* receiving my bill) disingenuous at best. First, nothing that I produced fits within any of the previously issued discovery requests nor has anything to do with my opinions nor my testimony. From the hearing in June, Ms. Lund should have known this.

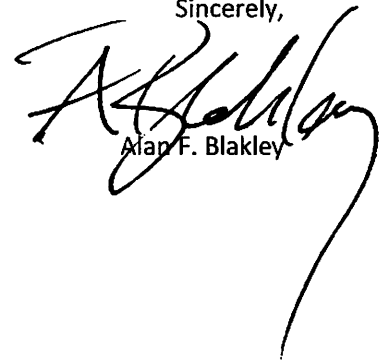
Letter to Judge Haddon/September 9, 2021/Page Two

Moreover, having taught civil procedure in two law schools and having practiced for 30 years, I know (and I know I don't have to tell you), if this were truly a dispute between Ms. Grohman and Mountain West concerning discovery or compliance with one of your orders, the proper procedure was to confer first. If that conference did not produce results, her recourse was to place the matter before you – not to subpoena a non-party under Rule 45. Ms. Lund made *no* effort to follow proper procedure.

Ms. Lund wants to paint this as a dispute between Mountain West and Ms. Grohman. By serving a subpoena under Rule 45 on me rather than following proper procedure and initiating a dispute with Ms. Grohman, she has belied this position. Given my opinion that Mountain West has not paid what it owes to Ms. Grohman, it is striking it refuses to pay what it owes to me. Finally, having been served with a subpoena under Rule 45 for irrelevant material at 9:50 pm on a Friday night at my residence (and I'm not even a witness in the first trial in this bifurcated proceeding), then refusing to pay for my time and costs, I have a hard time not seeing this as some sort of harassment.

I know you do not countenance such behavior toward a non-party. I do not want to file a lawsuit in Maryland and burden the courts here. Please help me get Mountain West to pay the bill it incurred by serving me with a subpoena under Rule 45. If possible, I'd like to add 2 hours of my time (\$600.00) to the bill for researching my options under Rule 45 and looking at discovery requests that I had previously reviewed in this matter, and for writing this letter.

Sincerely,



Alan F. Blakley

encl.

cc (via email):

Geoffrey C. Angel (christianangel@hotmail.com)

Elizabeth W. Lund (lund@berglawfirm.com)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

DONNA GROHMAN,

Plaintiff,

vs.

MOUNTAIN WEST FARM
BUREAU MUTUAL INSURANCE
COMPANY,

Defendant.

Cause No. CV-19-58-H-SEH

**SUBPOENA TO
PRODUCE DOCUMENTS
AND INFORMATION
TO ALAN F. BLAKLEY**

TO: Alan F. Blakley
4216 Norbeck Road
Rockville, Maryland 20853

YOU ARE HEREBY COMMANDED, all business and excuses being set
aside, within twenty-one (21) days from the date of service of this Subpoena, to

produce copies of the following documents electronically to the attorney for Defendant, Elizabeth W. Lund, One West Main St., Bozeman, Montana, 59715. If you wish not to produce the documents electronically, you may furnish copies to Veritext, 36 S. Charles Street Suite 2002, Baltimore, MD 21201.

1. All records of cases that you worked on as attorney, that you reviewed in preparing your expert report and preparing for any testimony in this case as described in Doc. 122 Transcript of Evidentiary Hearing Proceedings at p. 42 lines 12-22, excerpt attached hereto.

If you fail to produce the documents at the time and place required, you can be punished for contempt of court as provided by law. See Rule 45 Federal Rules of Civil Procedure attached hereto.

DATED this 22nd day of July, 2021.

BERG LILLY, PC

By /s/ Elizabeth W. Lund
ELIZABETH W. LUND
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that, on the 22nd day of July, 2021, a copy of the foregoing document was served on the following persons by the following means:

- ☐ CM/ECF
- ☐ Hand Delivery
- ☒ Mail
- ☐ Overnight Delivery Service
- ☐ Fax
- ☐ E-Mail

Geoffrey C. Angel
ANGEL LAW FIRM
803 West Babcock
Bozeman, MT 59715

/s/ Elizabeth W. Lund
Elizabeth W. Lund

1 A Well, I apparently am holding myself out as an expert in
2 some insurance issues.

3 Q I'm asking about your specialty. Different question.

4 A In practicing law?

5 Q Yes.

6 A I do not.

7 Q Okay.

8 And when you were deposed previously, you testified that
9 you'd handled one bad faith case. Is that accurate?

10 A That may be accurate as to what I testified then. But it
11 is not an accurate reflection of the record.

12 Q Okay.

13 How -- or what documents did you look at in order to
14 testify earlier today in response to Mr. Angel's questions
15 about additional bad faith cases that you have tried?

16 A I looked at some records that I still possess about some
17 of the cases that I handled. Especially, class actions. I
18 have kept a lot of my class action material electronically.
19 Most of my individual case material, I haven't kept. But the
20 reason I could testify with respect to Safeco, State Farm, and
21 Blue Cross Blue Shield class actions is that I looked through
22 some of my old client files electronically.

23 Q As far as the Safeco case, what were the issues in that
24 case, specifically?

25 A I believe that case focused on advance payment of medicals

DATE	LUND SUBPOENA Description	INITIALS	TIME	RATE	TOTAL		TOTAL DUE:	\$ 3,016.73
7/23/2021	9:50 pm - 10:25 pm: Receive sub poena from a person standing on my front porch disguised as a package delivery person and examine sub poena to attempt to determine whether to comply with it or argue that it was outside the discovery deadline	AB	0.60	\$300.00	\$ 180.00			
7/24/2021	9:45 am - 10:00 am: Collect all back up hard drives and back up cd's that might have information responsive to sub poena	AB	0.20	\$300.00	\$ 60.00			
7/24/2021	10:00 am - 10:30 am: Try to remember material I may have reviewed, including briefly viewing, prior to June hearing and create a file to include documents I locate now that I believe I reviewed in response to sub poena	AB	0.50	\$300.00	\$ 150.00			
7/24/2021	11:30 am - 12:25 pm: Gather documents listed in expert report that I reviewed so I would not duplicate in response to sub poena	AB	0.90	\$300.00	\$ 270.00			
7/24/2021	12:25 pm - 1:40 pm: examine one back up drive and search for insurance agreements and letters to and from insurance companies that I looked at to prepare for the June hearing and harvest some documents	AB	1.10	\$300.00	\$ 330.00			
7/24/2021	2:15 pm - 3:30 pm: Search 2 back up hard drives and 3 back up dvds for material on Burgett v. SAFECO Nat'l Ins. Co., U.S. Dist. Ct., Dist. Mont., CV-99-13-BU-RWA, U.S. Ct. App. 9th Cir. 02-35429, and Haskin, et. al. v. State Farm Mutual Insurance Co., Montana 4th Judicial District, Cause No. DV-00-302 and harvest some documents	AB	1.20	\$300.00	\$ 360.00			

7/25/2021	11:15 am - 11:55 am: begin searching large back up external hard drive for documents from former clients I reviewed, in any way, including glancing at, after notice of hearing and harvest some documents	AB	0.60	\$300.00	\$ 180.00		
7/25/2021	11:55 am - 12:20 pm: Begin creating a list of documents to be produced in response to sub poena so that I was certain to harvest everything	AB	0.30	\$300.00	\$ 90.00		
7/26/2021	9:30 am - 12:45 pm: Finish going through large back up hard drive and harvesting documents responsive to sub poena	AB	3.30	\$300.00	\$ 990.00		
7/28/2021	10:15 am - 10:28 am: Finalize list of documents produced and check for accuracy	AB	0.40	\$300.00	\$ 120.00		
7/30/2021	Print 377 pages @ \$0.25/page		377.00	\$0.25	\$ 94.25		
8/2/2021	9:30 am - 10:05 am: Go through all printed documents to ensure that everything printed	AB	0.50	\$300.00	\$ 150.00		
8/2/2021	Federal Express Charge		1.00	\$42.48	\$ 42.48		